

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PALO VERDE UNIFIED SCHOOL
DISTRICT, RIVERSIDE UNIFIED
SCHOOL DISTRICT, RIVERSIDE
COUNTY OFFICE OF EDUCATION,
SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT, AND SACRAMENTO
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2013010137

ORDER DENYING MOTION TO
DISMISS

On January 04, 2012, Student filed a Request for Due Process Hearing (complaint), naming Palo Verde Unified School District, Riverside Unified School District, Riverside County Office of Education, Sacramento City Unified School District (SCUSD) and Sacramento County Office of Education (SCOE) as the respondents.

On February 12, 2013, SCUSD filed a Motion to Dismiss, alleging that SCUSD was not the local educational agency responsible for serving Student at any times at issue in this case.

On February 15, 2013, Student filed an opposition. OAH received no response to the Motion to Dismiss from any other party in the matter.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child’s parent or legal

guardian resides. The determination of residency under the Individuals with Disabilities Education Act or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

California Education Code section 56150 provides that “Special education programs authorized by this part shall be provided, pursuant to Section 48645.2, for individuals with exceptional needs who have been adjudicated by the juvenile court for placement in a juvenile hall or juvenile home, day center, ranch or camp, or for individuals with exceptional needs placed in a county community school pursuant to Section 1981.”

California Education Code section 48645.2 provides that “The county board of education shall provide for the administration and operation of juvenile court schools established pursuant to Section 48645.1: (a) By the county superintendent of schools, provided that, in any county in which the board of supervisors is establishing or maintaining juvenile court schools on January 1, 1978, the county superintendent of schools may contract with the board of supervisors for the administration and operation of such schools if agreed upon between the board of education and the board of supervisors. In any event, the county superintendent of schools may contract with other educational agencies for supporting services to the same extent that school districts may contract with other such agencies. (b) By contract with the respective governing boards of the elementary, high school, or unified school district in which the juvenile court school is located.”

DISCUSSION

Student is a 10th grade student who was placed in juvenile hall in Sacramento County in August 2012. In September 2012, Student began school at El Centro Middle/High School, the juvenile hall school run by SCOE. Several IEP team meetings were held for Student in the fall of 2012 by SCOE without members of SCUSD in attendance. On December 14, 2012, another IEP team meeting was held, this time SCUSD and SCOE were present for the meeting. At the December 14, 2012 IEP team meeting, an assessment plan was developed showing that both SCOE and SCUSD were going to complete different parts of the assessment.

In the present matter, SCUSD contends that under California Education Code sections 56150 and 48645.2, the county office of education is responsible for providing special education to students in juvenile hall schools. Therefore, SCUSD contends, they have no responsibility to Student and should be dismissed as a party to this action.

Student contends that SCUSD has been responsible for the provision of a free appropriate public education (FAPE) for Student for the entire 2012-2013 school year to date. Student further contends that the responsible agency in this case is the school district in which the student’s parent lives, which in this case is SCUSD. Finally, the student alleges that special education due process hearings extend to the public agency involved in any

decisions regarding a pupil, and that SCUSD's participation in the IEP team meeting, another meeting and an assessment constitute involvement under the relevant statute.

In the application of the authority cited above, there are many factual questions which will entail an evidentiary hearing involved in the determination of responsibility for Student's placement for the 2012-2013 school year. The question of responsibility should be determined as part of an evidentiary hearing on the merits and not disposed of in a pre-hearing motion. Therefore, the Motion to Dismiss is denied without prejudice to allow the issue of which agency bears responsibility for Student's education for the 2012-2013 school year to be litigated at the upcoming hearing, should the parties so choose. All dates currently set in this matter are confirmed.

ORDER

SCUSD's Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: February 19, 2013

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings